

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 2:06-CR-00113-EFS-1

Plaintiff,

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION TO PROVIDE
MENTAL HEALTH EVALUATIONS**

ANTHONY E BURKE,

Defendant.

13 On December 9 and 14, 2016, the Court conducted a competency
14 hearing in this matter. See ECF Nos. 265 & 270. During the competency
15 hearing, the Court heard testimony from Cynthia Low, Ph.D., and Debra D.
16 Brown, Ph.D. The Court received the parties' exhibits into evidence,
17 and on request of defense counsel, the Court ordered that the
18 following exhibits (collectively, "Requested Materials") remain sealed
19 pending further orders from the Court:

A. Exhibit 1 (2016 Cynthia Low, Ph.D., Forensic Evaluation);

B. Exhibit 2 (Cynthia Low, Ph.D., Curriculum Vitae);

C. Exhibit 107 (2007 Cynthia Low, Ph.D., Forensic Evaluation);

and

D. Exhibit 113 (November 14, 2016, Debra D. Brown, Ph.D.,
Forensic Mental Health Evaluation).

26 | See ECF No. 275.

1 At the conclusion of the hearing, the Court ruled on a motion by
2 the U.S. Attorney's Office (USAO), ECF No. 259; the Court denied
3 permission to disclose the Requested Materials to Western State
4 Hospital, and held in abeyance a ruling on whether to allow disclosure
5 of the Requested Materials to the Snohomish County Prosecuting
6 Attorney's Office. See ECF No. 275. Since then, the USAO has filed a
7 "Motion to Renew [its] Request to Provide Mental Health Evaluations,"
8 ECF No. 276. For the reasons set forth below, the Court finds good
9 cause to grant the USAO's request in part and allow limited disclosure
10 of the exhibits in question.

11 As a preliminary matter, it is unclear whether the USAO seeks to
12 renew its request as to Western State Hospital, because its Motion to
13 Renew solely addresses disclosure to the Snohomish County Prosecuting
14 Attorney's Office. See ECF No. 276. Regardless, the Court continues
15 to find that the USAO has provided no persuasive reason why this Court
16 should order that the Requested Materials be provided to Western State
17 Hospital. The Court's denial of that portion of the USAO's motion
18 stands. See ECF No. 275.

19 However, the Court finds it to be in the interest of justice to
20 allow the USAO to disclose the Requested Materials to the Snohomish
21 County Prosecuting Attorney's Office. Attached to its Motion to
22 Renew, the USAO included a declaration by Matt Hunter, a Deputy
23 Prosecuting Attorney for Snohomish County. See ECF No. 276-1. Mr.
24 Hunter states that Mr. Burke has been charged with first degree murder
25 in Snohomish County, cause number 13-1-01584-1. ECF No. 276-1. The
26 Requested Materials will likely be relevant to Mr. Burke's murder

1 case, and are certainly relevant to issues such as his eligibility for
2 bail. Further, as Mr. Hunter notes, the Requested Materials will be
3 critical if the issue of Mr. Burke's competency is raised again in
4 those proceedings.

5 Mr. Burke objects on the basis that he has a compelling interest
6 in keeping his healthcare records private. See ECF Nos. 268 & 277.
7 The Court notes that much of the sensitive information contained in
8 the Requested Materials has already been discussed in open court
9 during the competency hearing, see ECF No. 265, and the transcript
10 from that hearing is available to the public, see ECF No. 267.
11 Indeed, as a matter of public policy, competency hearings and court
12 materials are usually made publicly available. See, e.g., *United*
13 *States v. Guerrero*, 693 F.3d 990, 998 (9th Cir. 2012) (noting that
14 although a defendant's rights to privacy and a fair trial are
15 significant, "we do not see how they would be substantially imperiled
16 by open competency proceedings").

17 That said, the general right "to inspect and copy judicial
18 records is not absolute." *In re McClatchy Newspapers, Inc.*, 288 F.3d
19 369, 373-74 (9th Cir. 2002) (quoting *Nixon v. Warner Commc'ns, Inc.*,
20 435 U.S. 589, 598 (1978)). The Court has supervisory power over its
21 records and files, and may deny access to prevent injustice. See *id.*
22 Here, the Court is mindful of Mr. Burke's privacy interests,
23 especially given the particularly sensitive nature of mental health
24 records. As such, the Court finds it proper at this time to allow
25 only limited disclosure of the Requested Materials.

26

The USAO may provide a copy of the Requested Materials to the Snohomish County Prosecuting Attorney's Office; the Snohomish County Prosecuting Attorney's Office shall then provide a copy to Mr. Burke's counsel in cause number 13-1-01584-1. The Snohomish County Prosecuting Attorney's Office may use the Requested Materials only in cause number 13-1-01584-1, and must first give defense counsel in that case 14 days' notice of its intent to do so. This notice requirement is intended to provide defense counsel with adequate time to file any motions in the state court that it believes appropriate.

Accordingly, IT IS HEREBY ORDERED

1. The USAO's Motion to Renew Request to Provide Mental Health Evaluations, **ECF No. 276**, as well as its Motion for Order to Produce Mental Health Evaluations to Western State Hospital and Snohomish County Prosecutor, **ECF No. 259**, are **GRANTED IN PART AND DENIED IN PART**, as set forth in this Order.

2. The USAO may provide the following materials to the Snohomish County Prosecuting Attorney's Office:

- A. Exhibit 1 (2016 Cynthia Low, Ph.D., Forensic Evaluation);
 - B. Exhibit 2 (Cynthia Low, Ph.D., Curriculum Vitae);
 - C. Exhibit 107 (2007 Cynthia Low, Ph.D., Forensic Evaluation); and
 - D. Exhibit 113 (November 14, 2016, Debra D. Brown, Ph.D., Forensic Mental Health Evaluation).

3. The Snohomish County Prosecuting Attorney's Office shall provide a copy of the above-listed materials to Mr. Burke's defense counsel in cause number 13-1-01584-1.

4. If the Snohomish County Prosecuting Attorney's Office intends to use the above-listed materials in cause number 13-1-01584-1, it must first provide 14 days' notice to defense counsel in that case.

5. This case shall be **CLOSED**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 29th day of March 2017.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge